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September 24, 2003

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Michigan Supreme Court Justices
c/o The Supreme Court Clerk
P.O. Box 30052
Lansing, MI 48909

OFFICE OF
THE CHIEF JUSTICE

Re: Opposition to MRE 404(b) Changes (ADM File No. 2001-51)

TO WHOM IT MAY CONCERN:

I have read both alternative a and alternative b as proposed changes to MRE 404(b). I am against any change in the present rule which would make it easier to get into evidence a defendant's prior bad acts. The reason for my opposition is that, after years of trying and handling such cases, I believe most juries merely use such evidence as "propensity" evidence--in other words, the defendant did it before, so he must have done it this time. I believe that evidence for such purposes, which is presently prohibited, is a violation of a defendant's due process rights and does not lead to fair trials. As the rule is written, much evidence which did not result in convictions could be admitted, which means you merely have several trials all at the same time. In addition, prosecutors are presently getting convictions in many domestic violence cases, and I don't think our system of justice should be changed in this manner.

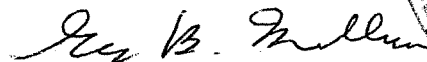
I would like to see the problem that the alternative wording is trying to solve laid out, and then an explanation why this particular rule change is the only way to really solve it. I don't believe this has been done.

I point out that prior bad acts are certainly usable at the sentencing of a defendant, even if such acts did not result in convictions. There it is very relevant to a defendant's background, but consideration at that point is where such information should stay.

Thank you for your attention to this matter.

Very truly yours,

SMITH & BROOKER, P.C.



George B. Mullison

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